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Paper No. 11

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OFFICE OF PETITIONS

In re Application of
Atsushi Shimizu
Application No. 09/885,296
Filed: June 20, 2001
Attorney Docket No. 15115/003001

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: DECISION ON PETITION
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This is a decision on "Petition in Response to Notice of Omitted Item(s) in a Nonprovisional Application filed under 37 CFR 1.53(b)," filed May 31, 2002 (certificate of mailing May 10, 2002), which is properly treated as a petition under 37 CFR §1.182, requesting, in effect, that the "Notice of Omitted Items in a Nonprovisional Application" mailed March 15, 2002 be withdrawn.

Application papers in the above-identified application were filed on June 20, 2001. On August 15, 2001, the Initial Patent Examination Division mailed a Notice to File Missing Parts of Application, informing applicant *inter alia* that substitute drawings with English language text were required. On January 15, 2002, applicant filed substitute drawings. However, on March 15, 2002, the Initial Patent Examination Division mailed applicant a "Notice of Omitted Item(s) in a Nonprovisional Application." Applicants were notified that the application papers had been accorded a filing date; however, Figure 44 described in the specification appeared to have been omitted.

In reply, applicant timely filed the instant petition, asserting that the Figure 44 was indeed submitted as page 42/53, however the figure was mistitled as Figure 40. As the correct Figure 40 is noted as page 38/53, it would be obvious to someone reviewing the drawings that the second Figure 40 was merely mislabeled. Accompanying the petition was *inter alia* a letter to the Draftsperson along with a formal drawing of Figure 44.

The application file is the Official record of what was received in the Office. A review of the instant application file reveals that Figure 44 was not among the papers filed on January 15, 2002, mislabeled or otherwise. There are not two figures present in the application labeled "40," as alleged. Petitioner has submitted no evidence to support their claim that Figure 44 was among the papers filed on January 15, 2002 (e.g., itemized postcard receipt). Accordingly, it is concluded that the "Notice of Omitted Item(s)" mailed March 15, 2002, was correct in stating that Figures 44 described in the specification appeared to have been omitted. Therefore, the "Notice" was properly mailed and will not be withdrawn.

Accordingly, the petition is **DISMISSED**.

The request for refund of petition fee is denied. Petitioner has not shown that Figure 44 was received in the Office on January

15, 2002, as alleged. The petition fee is required, since the petition was not necessary to correct any PTO error.

Nonetheless, a review of the drawing sheets as originally filed with non-English text reveals that Figure 44 was among those drawings present in the Office on June 20, 2001. Moreover, the Office will accord a filing date to an application meeting the requirements of 35 U.S.C. 111(a), even though some or all of the application papers, including the written description and the claims, are in a language other than English and hence do not comply with 37 CFR 1.52. On this basis, Figure 44 as corrected to include English text is accepted.

This application is being forwarded to the Office of Initial Patent Examination for processing with a filing date of June 20, 2001, using the 52 sheets of drawings resupplied January 15, 2002 with English text; and the 1 sheet of drawings (figure 44) resupplied May 31, 2002 with English text.

Telephone inquiries related to this decision should be directed to Petitions Attorney Nancy Johnson at 703-305-0309.

Christina Tartera Donnell for

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